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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CARMEN POWELL, PLAINTIFF, v. CITY OF CHULA VISTA; CHULA VISTA POLICE DEPARTMENT; DET. RUTH HINZMAN; AGT. ANDERSON; AGT. OYOS; SGT. CERVANTES; AND PERSON ENTITIES UNKNOWN; COUNTY OF SAN DIEGO AND SAN DIEGO COUNTY PROTECTIVE SERVICES WORKERS JULIE SMITH, NADIA NAJORS, MEGAN PETFINGER, REBECCA SLADE AND PERSONS AND ENTITIES UNKNOWN; CHILDREN'S HOSPITAL; DIANA CHASE; NURSE DEBRA DAVIES, LCSW, Defendants.	**Case No.: 07 CV 1836 JAH (JMA)** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT MORTEZA MIRKARIMI, M.D.'S MOTION FOR ENTRY OF FINAL JUDGMENT** Date: July 14, 2008 Time: 2:30 p.m. Judge: Honorable John A. Houston Room: Courtroom 11

Defendant, MORTEZA MIRKARIMI, M.D. (hereinafter "DR. MIRKARIMI") respectfully submits this Memorandum of Points and Authorities in Support of his Motion for Entry of Final Judgment.

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I.

STATEMENT OF FACTS

Plaintiff CARMEN POWELL ("PLAINTIFF") filed her original complaint on or about September 19, 2007 against eleven individuals and various entities. Defendant DR. MIRKARIMI was not identified in the caption of the complaint, nor was he identified in the body of the complaint as a defendant.

DR. MIRKARIMI brought a Motion to Dismiss pursuant to Rule 12(b)6 of the Federal Rules of Civil Procedure. DR. MIRKARIMI respectfully asks this Court to take judicial notice of his motion, filed on January 24, 2008, as it outlines his position as to why Plaintiff's original complaint was deficient. Specifically, DR. MIRKARIMI noted he was not identified as a defendant in the caption. He was not referenced in the introductory factual portion of the Complaint where PLAINTIFF described the alleged wrongful conduct of each defendant. The only reference to him was that his name appeared under Plaintiff's Third Cause of Action for Conspiracy Against Rights pursuant to 18 U.S.C. section 241. It was not clear PLAINTIFF intended for DR. MIRKARIMI to be a defendant. Notably, the Complaint did not contain a prayer for relief and did not set forth sufficient information to put DR. MIRKARIMI on notice of any allegations against him and any relief sought from him. DR. MIRKARIMI also moved to dismiss the Complaint as to him, in its entirety, on the grounds that 18 U.S.C. section 241 did not provide for a private cause of action.

The Motion came on for hearing on April 28, 2008. The Court dismissed the third cause of action, the only cause of action that referenced DR. MIRKARIMI, with prejudice as to all defendants. The Court also dismissed DR. MIRKARIMI without prejudice. (A true and correct copy of the Court's Minute Order dated April 28, 2008 is attached to the Declaration of Tamara L. Glaser as Exhibit A).

Plaintiff thereafter filed an amended complaint. DR. MIRKARIMI was not named in the caption nor did Plaintiff identify him as a defendant in the action. Notably, Plaintiff included previously unnamed parties in the caption of the amended complaint and deleted others. According to the docket report, the action has been terminated against DR.

MIRKARIMI. (A true and correct copy of the docket report evidencing DR. MIRKARIMI's termination from the action is attached to the Declaration of Tamara L. Glaser as Exhibit B).

Wherefore, DR. MIRKARIMI asks this Court to enter a separate and final judgment in his favor, and against PLAINTIFF.

II.

ARGUMENT

A. LEGAL STANDARD FOR MOTION TO DISMISS

Rule 54(b) of the Federal Rules of Civil Procedure provides a mechanism by which a judgment may be entered to finally resolve an action against one party when multiple parties are involved in an action. It says, in pertinent part:

> (b) JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all . . . parties only if the court expressly determines there is no just reason for delay.

(Fed. R. Civ. P. 54(b)).

DR. MIRKARIMI moves the Court to direct entry of final judgment as to him. To accomplish this, the court must direct entry of judgment and make an express determination that there is "no just reason for delay" in doing so. Fed. R. Civ. P. 54(b); *Continental Airlines, Inc. v. Goodyear Tire & Rubber Co.* ,819 F.2d 1519, 1525 (9th Cir. 1987).

DR. MIRKARIMI respectfully submits there is no reason for delaying the entry of final judgment in his favor. Plaintiff had an opportunity to amend her complaint in an effort to state an action against DR. MIRKARIMI. She elected not to do so. Wherefore, a dismissal is appropriate pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *See Yourish v. California Amplifier* (9th Cir. 1999) 191 FR.3d 983, 986. Here, no such motion was necessary as the action has been terminated.

WHEREFORE, DR. MIRKARIMI requests that final judgment be entered in his favor. There is no reason to delay entering a final judgment in that the action has been terminated as to him and there is nothing further to be accomplished by delaying the entry of judgment.

III.

CONCLUSION

Based on the foregoing, DR. MIRKARIMI respectfully moves the Court enter final judgment in his favor and against PLAINTIFF.

Dated: June 4, 2008

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